

LSK&D #: 294-2100 / 703448
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOAN TRUMAN SMITH, As Administratrix of
the Estate of Anita Smith, Deceased,

Plaintiff,

-against-

BRYCO ARMS, et al.,

Defendants.

Action No. 2
Index No. CV-02-3029

**NOTICE OF DEFENDANT
ACUSPORT
CORPORATION'S MOTION
FOR A SUPPLEMENTAL
ORDER OF CERTIFICATION
UNDER RULE 54(b)**

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PLEASE TAKE NOTICE, that upon the declaration of Paul Kassirer, dated July 6, 2005, and the exhibit annexed hereto, and all prior pleadings and proceedings, defendant AcuSport Corporation will move this Court before the Honorable Jack B. Weinstein, at the Courthouse, located at 225 Cadman Plaza East, Brooklyn, New York, on the 27th day of July, 2005, at 10:30 a.m. for supplemental Order, pursuant to Fed.R.Civ.Proc. 54(b), for an express determination by this Court that there is no just reason for delay in the entry of final judgment, and an express direction for the entry of judgment, dismissing the plaintiff's Complaint in its entirety as against AcuSport Corporation only.

Dated: New York, New York
July 6, 2005

Respectfully Submitted,

LESTER SCHWAB KATZ & DWYER, LLP



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TACKLE, INC.

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Action No. 2
Index No. CV-02-3029

Plaintiff,

-against-

BRYCO ARMS,

Defendants.

**DECLARATION IN
SUPPORT OF DEFENDANT
ACUSPORT
CORPORATION'S MOTION
FOR A SUPPLEMENTAL
ORDER OF CERTIFICATION
UNDER RULE 54(b)**

-----X
Paul L. Kassirer declares:

1. I am a member of Lester Schwab Katz & Dwyer, LLP, attorneys for defendant AcuSport Corporation ("AcuSport"). I am personally familiar with the matters set forth herein.

2. I submit this Declaration in support of AcuSport's motion for a supplemental Order, pursuant to Fed.R.Civ.Proc. 54(b), for an express determination by this Court that there is no just reason for delay in the entry of final judgment, and an express direction for the entry of judgment, dismissing the plaintiff's Complaint in its entirety as against AcuSport only. A proposed supplemental Order is annexed hereto as **Exhibit "A."**

3. On July 1, 2005, an Order was entered by this Court, granting AcuSport's motion for summary judgment, dismissing the plaintiff's causes of action for negligence and public nuisance. Since these were the sole remaining causes of action, the plaintiff's Complaint was dismissed in its entirety as against AcuSport. This Court also granted co-defendant Atlantic Gun & Tackle's motion for summary judgment in part,

dismissing the plaintiff's cause of action for public nuisance, yet denying summary judgment as to dismissal of the plaintiff's cause of action for negligence. Therefore, Atlantic Gun & Tackle remains as a defendant in this action.

4. Since this is a multiple claims action, in order to enter judgment dismissing the plaintiff's claim against AcuSport in its entirety, there must be an express determination by the Court that there is no just reason for delay, and an express direction for the entry of judgment. Fed.R.Civ.Proc. 54(b); see also, Ryan v. Dow Chemical Co., 618 F.Supp. 623 (E.D.N.Y. 1985).

5. There is no just reason for delay with respect to the entry of judgment dismissing the plaintiff's Complaint against AcuSport. See, e.g., P. v. Delta Air Lines, Inc., 102 F.Supp.2d 132 (E.D.N.Y. 2000); Geressy v. Digital Equipment Corp., 980 F.Supp. 640, 663 (E.D.N.Y. 1997).

WHEREFORE, defendant AcuSport Corporation respectfully requests that this Court issue a supplemental Order, pursuant to Fed.R.Civ.Proc. 54(b), making an express determination that there is no just reason for delay in the entry of final judgment, and an express direction for the entry of judgment, dismissing the plaintiff's Complaint in its entirety as against AcuSport Corporation only.

Dated: New York, New York
July 6, 2005



Paul L. Kassirer (PLK-8293)